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IN THE

Supreme Court of the United States

October Term, 1947

No. 1049

NICHOLAS J. CURTIS,
Petitioner,

vs.

HON. GUY L. FAKE, U. S. District Judge, Newark, N. J.; UTAH FUEL COMPANY, a corporation, its officers and agents, specifically: DR. E. R. MURPHY; DR. ROBERT S. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MANTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; HELEN N. PAPPAS, Paterson, N. J.; SORTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANS, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAKEN (MELVIN J. HAYS), Washington, D. C. (cannot be found); WILLIAM H. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. PAUL, Salt Lake City, Utah (no appearance; in default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON RAMBERGER, Salt Lake City, Utah (deceased, RAMBERGER COAL CO. substituted); DR. FREDERICK DUNN, Springville, Utah (appear by Special Appearance, name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. A. C. CALLISTER, Salt Lake City, Utah (appearance by Special Appearance, name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance, name only); CAROL C. JOHNSON, New York (Motion to Vacate); JOSEPH RIBIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES B. MAYER, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default),
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT, PHILADELPHIA, PENNA.

PETITIONER'S BRIEF

NICHOLAS J. CURTIS, LL. B., Petitioner,
Appearing in Person,
No. 145 N. Broad St.,
Trenton, New Jersey.

H. COLLIN MINTON, JR.,
Attorney for Himself, Utah Fuel Co., et als.,
Trenton Trust Building,
Trenton, New Jersey,

WILLIAM V. ROSENKRANS,
ROSENKRANS & ROSENKRANS,
Attorneys for Rosenkrans, et als.,
5 Colt Street,
Paterson, New Jersey,
Respondents.

Murrelle Printing Company, Law Printers, 201-203 Lockhart St., Sayre, Pa.

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Argument

POINTS OF FACT AND OF LAW IN THE BRIEF

1. *Jurisdiction:* Jurisdiction predicated under Sections 41, 43, 47 U. S. C. Tit. 8; Sections 1, 5, 15, 26 U. S. C. Tit. 15; Sections 103, and 729 U. S. C. Tit. 28.

2. The non-resident defendants were properly served with process.

3. The defendants properly joined as parties defendants.

4. The Rulings of the Court on Motion No. 4 held "Law of the Case".

5. A plea to jurisdiction should not be entertained on a particular ground after a motion to dismiss based on the same ground has been overruled.

6. The Rulings on Motion No. 4 of November 19, 1941, are binding upon every other judge of the same court.

7. The Opinion of the C. C. A. 3rd C. on Appeal No. 8027, is the "Law of the Case" and is binding on the same Court as well as in the court below.

8. The Findings of the Court below per Walker, D. J. and advisory jury supported by substantial competent evidence are conclusive.

9. In the Federal Courts a decision of the Circuit Court of Appeals is binding on the district courts in its circuit for the propositions which it decited.

Argument

10. Rephotostating petitioner's exhibits to avoid Findings of Fact and Law a crime under laws of U. S. 18 U. S. C. 233.

11. *Judicial Notice:* Sections 687, 688, 695, U. S. C. 28.

12. Decision of C. C. on Appeal No. 8027 "Law of the Case" in all further proceedings in the cause in the trial court.

13. The determination of C. C. on Appeal No. 8027 as to all questions within the record the "Law of that case" in all subsequent proceedings.

14. Hostility is a form of bias.

15. The remedy by appeal is inadequate.

16. The respondent judge counseled the institution, before him, of fraudulent, false and criminal proceedings so that he may avoid the judgment of the circuit court and findings of fact and law by the district court.

17. The petitioner herein is entitled to the protection of the "Due Process of Law" clause of the 5th Amdt. to U. S. Const.

18. The exhibition of racial and partisan feelings and repeated and unnecessary expressions of opinion of said respondent judge, Guy L. Fake, showing bias or prejudice with a fixed pre-judgment to force upon this petitioner martyric death in poverty, disqualified him.

19. The Constitution of the U. S. and Acts of Congress found in section 24, and section 25 of Title 28 U. S. C., the disqualification, contain mandatory provisions prohibiting

said respondent Judge, Guy L. Fake, from acting any further in the case; his acts and judgments absolutely void.

20. The judgments of said respondent, made and entered in disregard of the prohibitions of the U. S. Const. and three affidavits in succession under section 25 U. S. C. Title 28 are void.

21. All the judgments of said respondent judge in cases in which this petitioner was and is the plaintiff are reciting false pretenses whereby the said judge and the parties defendants in the suit carry on the conspiracy.

22. The said respondent judge in his opinion points out to the defendants the Statute of Limitations to be by them pleaded in defense of the claims and damages for which this petitioner demands judgment; and the defendants plead and present the same to said respondent judge according to his plan.

23. The offer made by H. Collin Minton, Jr., Counsel of Record for himself, Utal Fuel Company et als. respondents in this case, to the respondent Judge, Guy L. Fake, constitute offers to bribe the respondent judge to destroy the petitioner herein and his cause; within the meaning of the law found in section 131 of the Criminal Code (18 U. S. C. A. Sec. 238.)

24. An offer to bribe a judge in a pending cause on a hearing before him is an endeavor to influence him.

25. The declarations and admissions of the respondents which are set forth at pages 379, 380, 381, Vol. III, Record, are admissible against each one of them and against both of them, as well as against all those respondents on whose behalf they were made.

Argument

26. The place for the trial of this case is the Division of the Court below at the City of Trenton, Mercer County, New Jersey where:

27. The respondent Judge, Guy L. Fake, uses the office and judgeship of the United States District Court, District of New Jersey, Division at Newark, N. J. for his personal gain and ambitions, thereby involved and involving every other judge of the same court, as well as the Judges of the Circuit Court of Appeals, Third Circuit, who are endeavoring to "save him.".

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1947 No. .....

Nicholas J. Curtis,

Petitioner

vs.

Guy L. Fake, U. S. District Court Judge, District of New Jersey, Division at Newark, Utah Fuel Company, a corporation, et als.

Respondents

BRIEF

STATEMENT OF FACTS

Please see, read and consider the first, second, third, fourth, fifth and sixth counts of the complaint, Civil No. 728, at first part of Volume I, Record.

STATEMENT OF THE CASE

This is a brief in support of a petition for writ of certiorari to review the judgment of the Circuit Court of Appeals, Third Circuit, entered the 4th day of December, 1946, affirming the judgment of the District Court of the United States, District of New Jersey, Division at Newark,

N. J., dismissing this petitioner's proceedings under Section 25 of Title 28 U. S. C. by District Court Judge Guy L. Fake of said Court which proceedings please see at paper book Volume III, Record and supplement thereto.

The bases of said proceedings are :

1st: That the Division of said Court at Newark is not the proper Court for the trial of said cause.

2nd: That District Court Judge Guy L. Fake is not a proper authority to proceed any further and preside or hear any question in the above-entitled cause; nor is he legally qualified to play judge and proceed to trial because he has gone too far with the life, liberty, property and pursuance of happiness of this petitioner.

Take the case against the First National Bank and Trust Company of Ridgewood, N. J. See the Index to Brief in C. C. A., 3rd C., parts of which are made parts of said Index.

FACTS

This petitioner was employed by the Excellent Restaurant at No. 10 W. Englewood Ave., Englewood, N. J., at $100.00 per month and meals. His youngest brother, Dan Curtis, was the owner and operator of a small lunch room which was located at corner of Chestnut Street and Ridgewood Ave., Ridgewood, N. J. He took sick and remained in bed and left the lunch room in the hands of a Greek from the Island of Cypros, a stranger.

This petitioner was informed of his said sickness and was asked to rush to his bedside. This petitioner went to his brother's bedside and there he was ordered to go to the lunch room and take care of the same. This petitioner did as he was ordered and worked there sleeping in the same bed with said brother. Within the period of 3 to 4 days said brother recovered and went back to his work in the lunch room. Then and there he discharged two employees and told this petitioner thus: "You take care of the place because it is your own. All properties inherited and acquired by purchase are in common of three brothers."

This petitioner went ahead as told, working 15 to 18 hours a day, seven days in a week. This went on for over two years and at the end of the closing of said lunch room by the city, said brother called in Frederick Watson, lawyer, Ridgewood, N. J., to frame up things for him so that he could leave the United States with all moneys earned during the stated times. Said Frederick Watson came to the door of the lunch room with his secretary. There she called his attention thus: "There! That's whom he frames up. Look out". A. Watson: "We do not care whom he frames up. All we want is to get him out of here." There they proceeded and met petitioner's said brother and the two proceeded and framed things up by appointing said bank legal representative. Proceeding further he put away the bank books, closed the lunch room, put part of goods, etc. away and gave the rest of it away. This petitioner appealed to him for money to clear this conspiracy and he attacked petitioner telling him thus: "I want to see the judge who will give you justice." etc. Thereafter this petitioner found about $75.00 in the room where the two were sleeping on a table and a note saying that he left some more with Gust Livitsa-

nos, cousin, Paterson, N. J. Said cousin gave this petitioner $125.00 and kept $100.00 for a loan he made to him in 1919. As for about two months work for which this petitioner worked for him, he did not pay a single cent but ordered him to go to his employer penniless. Said brother left the United States and went to Athens, Greece, acquired buildings, opened a grocery (delicatessen) store, married some woman, diamonds and so forth, leaving this petitioner walking the roads hungry and without shoes and said bank was collecting all moneys loaned here to friends and relatives. Thus, the said case went before District Judge Guy L. Fake, the respondent in the proceedings under the Judicial Code, Section 21 and in one of the hearings had before him he, said judge, played love with Walter Winne of Counsel for said bank and on that he dismissed the suit without prejudice. These practices (dismissals without prejudice) having been going on during the entire life of the conspiracy. It is fitting to say here that said brother of this petitioner is the same brother whom he rescued from the death bed of the Utah Fuel Company, principal respondent in this case, first at Clear Creek, Utah, and again at the St. Marks Hospital, Salt Lake City, Utah.

Now take the case against Nicholas J. Pappas et als., L. 4759 U. S. D. Ct. D. N. J.

FACTS

This petitioner arrived at Paterson, N. J. in the course of the prosecution of the conspiracy from the State of Utah and on to Washington, D. C. and it was past midnight and

he went into a restaurant near the City Hall, which restaurant was operated by Spiros Pappas, brother of said defendant, and others. In the said restaurant this petitioner met Michael Lavdas who was employed therein. Lavdas told this petitioner that he would not be able to find a room at that late hour and asked him to wait for him to close and go with him to his apartment and sleep there. This petitioner went and passed the rest of the night. The following morning this petitioner stepped down to the street and was met by said Pappas. There, in front of his restaurant, said Pappas, Nicholas J., insisted that this petitoner go to work for him promising to pay him the sum of $25.00 per week and meals. This petitioner went to work and worked as night counterman-manager. Said employer did not pay promptly but he furnished room and meals and there were some tips earned during the night. Thereafter said employer disappeared and this petitioner demanded payment of wages from his wife. She told this petitioner to wait for her husband to return from the mountains. He finally returned, or, showed up, and this petitioner demanded payment of the moneys due and unpaid, including moneys paid out for bills of employer. His answer was that he was not going to pay this petitioner the amount he promised to pay him because he earned money there from tips and that petitioner did not work for him for so long a time as he demanded pay for. This petitioner drafted the complaint against said employer and presented to the Clerk of the Paterson District Court but she refused to file it and demanded that this petitioner retain a lawyer. Thereupon this petitioner retained John Gall, a practicing lawyer, Paterson, N. J. who filed complaint and brought it to trial.

While rooming in the said employer's rooming house,

his wife went and searched the belongings of this petitioner and found copies of petitioner's Petition for Writ of Mandamus in Re: *Curtis vs. Utah Fuel Company et als.*, No. 5547, U. S. Dist. Ct., Dist. of Utah. Petition containing proceedings of said cause was printed for this Court, which petition please see. Thereupon she came to this petitioner and asked him for a copy saying that she needed for her children to read it. Petitioner herein gave her one copy and the next thing she did do with it she took it to William V. Rosenkrans their lawyer. It can be that she obtained it for him under his directions. Harry Sussman, co-defendant in said action in said U. S. Court was their confidential man and visitor of their said restaurant, delivering through said restaurant five gallon oil cans full through the Broadway door to the rear door and out into a saloon next door which it had trap door with the restaurant whereby beer, whisky, etc. was passed into the restaurant and served at the tables. The case went to trial in said Paterson District Court with William V. Rosenkrans as Counsel and said Harry Sussman as witness. Said counsel first went into the judge's chambers with the said paper book and had fixed things with said judge in advance. The said Paterson, N. J. court gave judgment according to the version of said employer and contrary to the evidence given by this petitioner and his witnesses. Next to this, this petitioner hired or retained David Cohn, lawyer, Paterson, New Jersey and obtained a rule to show cause upon nine (9) affidavits in support of the Rule. (See them at pp. 63-67 of the third part of Vol. I, first part of pleadings). On the return day of said rule District Judge McDermott in open Court from the Bench attacked this petitioner saying that the United States Government prosecuted this petitioner and convicted him as a person

unworthy of belief; and on that Opinion he dismissed the rule to show cause. Thereafter said employer, Pappas, closed his said restaurant and there was not a cent collected from him. Thus William V. Rosenkrans, Harry Sussman, Nicholas J. Pappas and Helen N. Pappas defrauded this petitioner of every dollar due him for his work and labor because he sued the said respondent Utah Fuel Company and others out in the State of Utah. The action for the recovery of damages from said persons or conspirators was commenced on the authority of the law found in subdivision (3) of Section 47 of Title 8. Aliens and Citizenship:

(3) Same; to deprive citizen of rights or privilleges—

All the elements of the conspiracy are present in the case. Said Harry Sussman after said trial disappeared and was reported dead, whose death certificate please see. It is in the Record. The original is on file in the district court. He covered himself under said certificate for years and finally he was met by this petitioner and ran into the next lunchroom therein disappearing. But the said statute has not and have had no meaning as to District Court Judge Guy L. Fake. He falsely dismissed the action, notwithstanding the said Act of Congress of the United States.

The case against Candaras, No. 5109.

Candaras and his wife's brother hired this plaintiff to work for them in a restaurant at Hackensack, N. J. Petitioner worked for some time and then was fired and told to return for his pay. This petitioner returned for his pay as he was told but instead of pay he was attacked by a man acting as manager and ordered off the place. This petitioner

filed suit against them in District Court of Bergen County, Hackensack, N. J. and the case went to trial before District Judge James White who gave judgment for plaintiff for the full amount claimed. Thereupon Candaras closed the restaurant, removed the fixtures and went to his other place of business in Begotta, N. J. just across the city line of Hackensack, N. J. This petitioner called upon Candaras's attorney to make good the judgment but he minced his writings to bankruptcy and inability to pay the judgment. This petitioner filed his complaint against Candaras in the District Court of the United States, District of New Jersey, under the Bankruptcy Act as there was no bankruptcy proceedings had and employer was not a bankrupt. Case came on for trial before District Judge Guy L. Fake, the respondent in the present proceedings, only for this petitioner to be vehemently attacked by said judge and on his attacks against this petitioner he dismissed said case on his own will or whim.

Thereupon this petitioner issued a rule to show cause before Jerome Dunn, Commissioner, Ridgewood, N. J. Case came on for trial or hearing and Candaras appeared with his lawyer, Abraham L. Rosenberg. At said trial this petitioner was attacked by said lawyer who told the Commissioner thus: "He should be locked up in an institution." Commissioner made them pay the judgment. For the foregoing three cases, see the parts embodied in the Appendix of the Brief to the Circuit Court of Appeals, Third Circuit, Appeal No. 9178, the review of which judgment is sought.

The conspiracy became so notorious as to force this petitioner to have a law suit against every person employing him as well as against the Social Security Administration Officials and there was no way out of it. For the fore-

going reasons this petitioner appealed to the Industrial Commission of the State of Utah for copies of cases similar to his case against the respondent Utah Fuel Company. The Commission responded and furnished copies of the decisions of the cases for which application was made. See them at pages 59 and on to 108, in particular, the case of *James Flementis v. United States Fuel Company* at page 98 and on to page 108 of Complaint, Civil No. 720, first part of Vol. I.

The persecution was dramatized and this petitioner did not know that such plot was going on. The said Harry Sussman was the first person to apprise this petitioner of that side of the conspiracy and line of persecution. The then Pathe Exchange and Famous Players-Lasky Corporations appeared to be the exhibitors. In the month of February, 1927, this petitioner filed suit against said exhibitors and others in U. S. D. Ct., So. District of N. Y. (See E-Vol. 40—p. 201); also in U. S. D. Ct. District of N. J. The said exhibitors appearing therein gave their defense as being the criminal prosecutions had against this petitioner per Bruce Bromely of Counsel in his argument before Hon. August N. Hand; then D. J. Judge Hand sustained the petitioner's complaint and ordered him to file an action at law. In the meantime the defendants took out several orders for security of costs in the sum of $750.00 and thus made it too steep for this petitioner to proceed to trial there. The Pathe Exchange, Inc. by James Cannon, its counsel of record, sought settlement of the suit out of Court but their operations were so infernal as to lead this petitioner to rely upon the courts; and for that reason he refused to accept the offer made by Mr. Cannon. In the U. S. D. Ct., District of N. J., the suit came on to be heard before District Judge William Clark on

defendants' motions to strike complaint and dismiss suit. Counsel for said defendants appeared and argued thus: "Your honor, I do not know what to say about this case. Here (handing to said judge the copy of Bill served upon them) take it and do as you please." District Judge William Clark responded thus: "Yes, leave it to me." Received the copies handed up, pocketed them and never disposed of them and upon appeals made to him by this petitioner he refused to give any statement. On motion of this petitioner District Judge Joseph Bodin orally ordered this petitioner to proceed to the State of Utah and take depositions to be used in evidence. This petitioner went to the State of Utah and at Price, Utah, he was held up and ruined, had his automobile taken away and sold at auction to the mobster who took it away. The Clerk of the Federal Court for the District of Utah demanded written Order from the court here before he would permit this petitioner to proceed and take the depositions. This petitioner made written application to Judge Bodin of the court below for an Order to take the depositions but Order was refused. The case was later dismissed by District Judge Runyon.

District Judge Guy L. Fake, the respondent in the proceedings here, was appointed Federal Judge in 1929, and in a conversation with Mr. Charles E. Jaeckel, Deputy Clerk, Newark, N. J. made in the presence of this petitioner in the course of his usurpation of his judicial powers to deprive this petitioner of life, liberty and property, he stated that he had given his word of honor and had to do it. Please see above, the record of the case and the Index to the Brief to the U. S. C. A., 3rd. Circuit.

Civil No. 728 was first filed in the court below as L-5773. 11-6-1936, November, 1936 and came on to be heard and

argued before District Judge Phillip Forman on defendant's, Utah Fuel Company's motion to strike complaint and dismiss action on the 11th day of December, 1936. H. Collin Minton, Jr. appeared for said defendant and argued the motion repeating the criminal charges and atrocities committed in the State of Utah and Washington, D. C. (See the 23rd and 24th Counts of the Complaint Civil No. 728, Vol. I, Record). It was the acts of said counsel and defendant in furtherance of the object of the conspiracy committed before the Court below at Trenton, N. J. which caused this petitioner to appeal to the Industrial Commissioner of Utah for precedences to establish the cause which precedences see at the appendix of the Complaint. Appeal was taken to the U. S. C. C. A., 3rd Circuit and appeal dismissed.

Civil No. 728 was filed January 12, 1940. (See table of Contents and Docket Entries in first part of Vol. I, Record.) District Court Judge Thomas G. Walker conducted the necessary hearings as nearly according to the usual course of judicial proceedings as possible with a court stenographer in attendance in all the hearings and the proceedings were stenographically taken down: Stenographic Minutes—Hearing on May 6, 1940, pp. 406-412 inclusive, Vol. III, Record; Hearing of April 22, 1940, pp. 495-504 inclusive; Hearing on May 13, 1940, pp. 504-514 inclusive, supp. to Vol. III, Rec. (See also the Table of Contents in 1st part of Vol. I, Rec.). On information and belief on one of said hearings Judge Walker had with him an advisory jury under Fed. Rule 39 (c), and on November 19, 1941, Judge Walker entered his Memorandum Opinion (Findings of Fact and Conclusions of Law). (See it at pp. 352-356, Vol. II, Record pp. 17-22 Bill in Equity, 2nd part of Vol. I, Record.)

This petitioner felt and feels that the Complaint in

Civil No. 728 should have been held good by Judge Walker as against all the conspirators and for that reason he appealed to the Circuit Court of Appeals Third Circuit. (See Appeal No. 8027.) On this said appeal the respondents were well represented by counsel, including a Brief from the Attorney General and his Assistant of the State of Utah. The Assistant Attorney General came all the way from the State of Utah and argued the case for the respondents but failed because said circuit court affirmed the judgment of the district court. (See Decree at pages 303-304 and Mandate at the second part of page 304 to page 306, Vol. II, Record.) This petitioner has done all he could do to see that his case will not go before District Court Judge Guy L. Fake. (See citations of U. S. C. C. A. 3rd Circuit.) But finally he was forced to go before him. (See petitioner's proceedings under Section 25 of Title 28 U. S. C.) The matters and things set forth in these said proceedings and the exhibits thereto brought this matter up to the judgment of the said circuit court, which judgment is the subject of the present proceedings for Writ of Certiorari. (See also petitioner's Petition for Writ of Certiorari of October Term, 1945.)

The character record of the practices of the respondent Utah Fuel Company and its officers and agents against their employees is too well known to this petitioner. See exhibit containing cases against it. This petitioner for some time was the interpreter of said respondent company over two to three hundred employees and has seen enough for him to leave it. Leave it and its pay for good. Leave it to save his life from being shot out of him.

The respondent District Judge Guy L. Fake, by the issuances and entering of false and deceptive orders and

judgments in cases in which this petitioner was plaintiff, has forced upon this petitioner martyric poverty and actual starvation; caused death blows to be inflicted upon his person; and deprived him of his civil rights ever since he was given complete control over the cause of this petitioner.

Apprehending the repetitions of the injustices of said respondent judge, this petitioner moved by motion to: (1) Have his case go before District Judge Avis at Camden, N. J.; (2) in U. S. C. C. A., 3rd C., by Petition for Designation of a district judge to proceed to trial, Case No. 8397; and (3) in said circuit court by petition for writs of mandamus and prohibition. See citations in present petition. In all, relief was denied to this petitioner. Thus, this petitioner was forced before respondent District Judge Guy L. Fake, for further proceedings to be had before him.

Upon returning before said respondent judge (see pp. 379-380-381, Vol. III, Record) for further proceedings to be had in this civil suit, he, said respondent judge, charged this petitioner in the most hated and barbaric manner this petitioner was ever charged. Therein and therebefore he counseled H. Collin Minton, Jr., counsel of record, to institute criminal proceedings by motion and watch it to have it go before him promising to him that he will deprive this petitioner of his rights acquired by the judgment of the said circuit Court on Appeal No. 8027, and the findings of fact and conclusions of law entered by District Court Judge Thomas G. Walker; and force upon this petitioner martyric death in poverty here in the United States (at pp. 379-380-381, Vol. III, Record). Thereupon said counsel obtained photostatic copies of this petitioner's exhibits on file and of record in his cause; issued a notice of motion; attached to it

a homemade findings of fact and law; and attaching the rephotostated exhibits to the same presented the same to said respondent judge who thereupon handed down an Opinion (at pp. 381-382 top p. 383, Vol. III, Record) therein completing his parasitic ambitions. An appeal was therefrom taken to the U. S. C. C. C., 3rd C., No. 8664. It was on the day on which this said appeal was argued when Mr. Justice Goodrich of said circuit court handed down his opinion in open court, holding this case to be for him "A National Duty" *and therefore he was going to save the respondent District Judge: and thereupon the petitioner's appeal was dismissed.* Thereupon this petitioner applied to this court for writ of certiorari, only for this court to be deprived of its jurisdiction by concerted action in furtherance of the object of the conspiracy; and for this petitioner to pay out over and above one thousand dollars. Upon receiving notice of entry of Order denying writ of certiorari, the proceedings embodied in paper book Vol. III were duly filed. Sticking to his parasitic will, the said respondent judge dismissed said proceedings. Judgment, page 524, Supp. to Vol. III, Appeal No. 9178 was taken and Mr. Justice Goodrich headed the Court and dismissed the appeal. It is to be of judicial notice that this petitioner is in and before the Courts within the States of New Jersey and New York ever since the year 1925 and the conspiracy is not anywhere near checked. For the last five years it flourishes here in the city of Trenton, Mercer County, State of New Jersey, wherefrom the respondent Guy L. Fake took this case away to himself to Newark, N. J. to cover his past and present corruptions. (Memorandum pages 515-516-517-518, Supp. Vol. III, Record.) Petitioner resides three city blocks opposite the Clerk's Office here in Trenton, N. J.

Argument

1. Jurisdiction. The petitioner in this suit predicated jurisdiction upon the causes of actions which he alleges in his Declaration under legislation enacted during the reconstruction period (Act of April 20, 1871, Ch. 22, Secs. 1, 2, 17 Stat. 13), and now embodied in the United States Code (8 U. S. C. A. Secs. 43, 47.) The latter section (47) expressly authorizes an action for the recovery of damages. Such an action is an action based upon the laws of the United States as to which the Federal Courts have jurisdiction. *Mitchell v. Greenough,* 100 F. 2d 184, citing *Sullivan v. Felix,* 5 Cir., 194 F. 88, affirmed, 233 U. S. 318, 34 S. Ct. 596, 58 L. Ed. 980; *McClain v. Rankin,* 197 U. S. 154, 25 Sup. Ct. 410, 49 L. Ed. 702, 3 Ann. Cas. 500; *Smith v. Kansas City Title & Trust Co.,* 255 U. S. 180, 41 S. Ct. 243. See the reported case *Campbellsville Lumber Co. v. Hubbert,* 112 F. 718, 50 C. C. A. 435, affirmed *Hubbert v. Campbellsville Co.,* 24 S. Ct. 28, 191 U. S. 70, 48 L. Ed. 101. Courts 424—Federal Courts. 1. Allegation and proof that the value of the matter in controversy exceeds $3,000 is unnecessary in a suit in a federal district court, brought under the Civil Rights Act (8 U. S. C. A. 43); *Oney, et al. v. Oklahoma City et al.,* 120 F. 2d 861; *Viles v. Symes,* 129 F. 2d 828; *Snowden v. Hughes,* 132 F. 88; Tit. 28 U. S. C. A., Sec. 41, Subd. (1) last sentence (12), (14), (17).

Jurisdiction under the 15th Section and Sections 1 to 7 of Title 15, U. S. C.; also Section 26 of same Title. It is the duty of the court below to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. *United States v. Standard Oil Co.,* 154 F. 722, citing: *Story's Eq. Pl.; Shields v. Barrow,* 17 How. 130, 15 L. Ed. 158; *Minnesota v. Northern*

Securities Co., 185 U. S. 199, 255, 22 Sup. Ct. 308, 46 L. Ed. 499.

c. Exclusiveness: Hughes Federal Practice, Sec. 1714, citing: *General Investment Co. v. Lake Shore & M. S. Ry. Co.*, 260 U. S. 261, 43 S. Ct. 106, 67 L. Ed. 244.

d. Materiality of amount in controversy. The sum or value in controversy is immaterial to the jurisdiction of the district courts in suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. 28 U. S. C. A. Sec. 41 (1), Jud. Code, Sec. 24 (1) last sentence; 15 U. S. C. A. Sec. 15; Hughes Fed. Pr. Sec. 1775.

2. The non-resident defendants were properly served. It can no longer be doubted that Congress has the power to confer upon the district court authority to issue process beyond the territorial limits of its district. *United States v. Union Pacific Railroad Co.*, 98 U. S. 569, 25 L. Ed. 143; *Robertson v. Railroad Labor Board,* ; *Haskel v. Aluminum Company of America, et al.*, 14 F. 2d 864.

3. The defendants in Civil No. 728 were properly joined as parties defendants. Rule 20 of the New Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723; *McNally v. Simons, et al.*, D. C. S. D., N. Y. (See pp. 12, 13, 14 Record of pleadings, Vol. I.); Joint Tort Feasors may be joint, *Brown v. Southern Pacific Co.*, 31 Ut. 318, 88 P. 7; R. S. of Ut. 104-3-13; Fraud—of all parties to fraud, *White v. Texas Co.*, 202 P. 826, 59 U. 180; Criminal—All guilty, *State v. Morgan*, 22 U. 162, 61 P. 527; *State v. King*, 24 U. 482, 68 P. 418; Cheating of property—Statute includes real estate as well as personal property, *State v. Balek*, 105 P. 910, 36

U. 605; "Torts"—Actions properly joined which arise out of continuous, official acts, *Wilson v. Sullivan,* 17 U. 341, 53 P. 14; Several causes of action arising out of injuries with or without force to person and property of either may be joined, *Thomas v. Bythe,* 44 U. 1, 137 P. 396; Continuous tortious acts may be combined to avoid multiplicity of suits. *Wilson v. Sullivan,* 17 U. 1, 137 P. 396; acts which constitute but a single wrong may be commingled, *Reese v. Qualtrough,* 48 U. 23, 156 P. 955; Joint Wrongs, Cooley on Torts, Vol. I, Ch. V. p. 223, and cases cited; 104-7-3, Ut. code.

4. The rulings on motion No. 4, of January 19, 1941, of the court below has been held to be the law of the case as to matters thereby adjudicated. (21 C. J. S. Sec. 195, at p. 339.). Citing: 47 *Potts v. Village of Haerstraw,* 93 F. 2d. 506; *C. I. T. Corporation v. Sanderson,* 49 F. 2d. 937; *Weagant v. Bowers,* 49 F. 2d. 934; *Commercial Union of America v. Anglo-South American Bank,* 10 F. 2d. 937. (See decision of this said case at pages 470 to 481 inclusive, Vol. III, Record). See also the cases quoted therein; *Piest v. Tide Water Oil Co.,* 27 F. Supp. 1021; *Presidio Mining Co. v. Oberton,* 261 F. 933, affirmed 270 F. 388, and certiorari denied, *Martin v. Presidio Mining Co.,* 41 S. Ct. 525, 256 U. S. 694, 65 L. Ed. 1175; *United Drug Co. v. Cordley & Hayes,* 132 N. E. 56, 239 Mass. 334; *Darling v. Abbot,* 191 N. W. 20, 221 Mich. 449; *Schickler v. Penrod Co.,* 227 N. Y. S. 331, 222 App. Div. 627; *Barber v. Rowe,* 193 N. Y. S. 157, 200 App. Div. 290; *Sterling Bag Co. v. City of New York,* 11 N. Y. S. 2d 297, 256 App. Div. 645; *Henry v. New York Post,* 5 N. Y. S. 2d. 716, 168 Misc. 247, affirmed 8 N. Y. S. 2d. 1022, 255 App. Div. 973; *Halzer v. Deutsche Eichsbahn Gesellschaft,* 28 N. Y. S. 2d. 284.

5. A plea to the jurisdiction should not be entertained

on a particular ground after a motion to dismiss based on the same ground has been overruled, Id. *Martin v. Chicago, etc. Electric R. Co.*, 77 N. E. 86, 220 Ill. 97.

6. The rulings on motion No. 4 of November 19, 1941, are binding upon every other judge of the same court (21 C. J. S. Section 195, at page 340, 2d col., different judges). Ordinarily becomes the law of the case in that court; 85 *Aachen & Munich Fire Ins. Co. v. Guaranty Trust Co. of New York*, 24 F. 2d. 465, reversed on other grounds, 27 F. 2d. 674, and certiorari denied, 49 S. Ct. 83, 278 U. S. 648, 73 L. Ed. 560; *Farmers' Loan & Trust Co. v. Miller*, 298 F. 758. One judge of a court should not ordinarily review or disturb the rulings of another judge of the same or a coordinate court in the same case, 86 *U. S. ex rel. Hughes v. Gault*, 13 F. Supp. 100, affirmed; *Leathen Smith-Putnam Navigation Co. v. Osby*, 79 F. 2d. 280, certiorari denied 56 S. Ct. 370, 296 U. S. 653, 80 L. Ed. 465; *Kings County Lighting Co. v. Nixon*, 268 F. 143, affirmed; *Newton v. Kings County Lighting Co.*, 42 S. Ct. 268, 258 U. S. 180, 66 L. Ed. 550; *Harris v. Chicago House Wrecking Co.*, 145 N. E. 666, 314 Ill. 500, reversing 226 Ill. App. 220; *Second Nat. Bank v. Leary*, 187 N. E. 611, 284 Mass. 321; *United Drug Co. v. Cordley & Hayes*, 132 N. E. 56, 239 Mass. 334; *Henlun Holding Corp. v. Ess Bros. Holding Corp.* 239 N. Y. S. 259, 228 App. Div. 102; *Endurance Holding Corp. v. Kranne Surgical Stores*, 238 N. Y. S. 377, 227 App. Div. 582; *Mutual Thread Co. v. Oriental Textiles*, 176 N. Y. S. 313, 188 App. Div. 104; *Western Manufacturing & Oil Co. v. American Spirits Mfg. Co.*, 175 N. Y. S. 345, 187 App. Div. 230; *Tallassee Power Co. v. Peacock*, 150 S. E. 510; 15 C. J. 961 Note 36.; *United States v. Hirshhorn*, 21 F. 2d. 758. See also 21 C. J. S. Courts, Sec. 196.

7. The Opinion of the Circuit Court of Appeals, Third

Circuit, on Appeal No. 8027 is the "Law of the Case" and is binding on the same court as well as in the court below. Cyc. of Fed. Proc. Sec. 684; citing: *McCarty v. Palmer,* 29 F. Supp. 585, Cyc. of Fed. Proc. Sec. 684. Opinions of Circuit Court of Appeals.

(For further proceedings to be there taken in pursuance of such determination. 877 U. S. C. A. 28. See p. 28a of Appendix.)

In a system of jurisprudence founded upon stare decisis it does not lie within the domain of a court of first instance to take it upon itself to upset a rule of long standing without most pressing circumstances to demand it. *McCarty v. Palmer,* 29 F. Supp. 585. Circuit Court of Appeals decisions are therefore binding in their own circuit, on themselves and the district courts, in so far as they are in harmony with the decisions of the Supreme Court. *E. Edelmann & Co. v. Triple A. Specialty Co.,* 88 F. 3d. 852, certiorari denied 300 U. S. 680, 81 L. Ed. 884, 57 Sup Ct.; *In re King,* 46 F. 2d. 112; *Hartford & New York Transp. Co. v. Rogers & Hubbard Co.,* 40 F. 2d 954, aff'd 47 F. 2d. 189; *In re Imperial Irrigation Dist.,* 38 F. Supp. 770; *Burris v. American Chicle Co.,* 33 F. Supp. 104, modified, 120 F. 2d. 218; *Bourgois, Inc. v. Willingmyer,* 33 F. Supp. 863; *United States v. Rollnick,* 33 F. Supp. 863; *United States v. LaVine,* 28 F. Supp. 113; *United States v. Eighty Acres of Land in Williamson County,* 26 F. Supp. 315; *Cookson v. Louis Marx & Co.,* 23 F. Supp. 615.

A decision of a Circuit Court of Appeals is authoritative and binding upon a district court of the same circuit. *Elliott v. Wheelock,* 34 F. 2d. 213; *United States v. Goldman,* 28 F. 2d. 424; *Young v. John McShain, Inc.,* 39 F. Supp. 521; *Forstmann v. Rogers,* 35 F. Supp. 916.

8. The Findings of the Court below per Walker, D. J. and advisory jury, supported by substantial competent evidence are conclusive. See Ruling Case Law of the State of Utah at pages 57, 58, 59, of the Appendix to the Declaration in Civil No. 728; Roberts, J. in *Mayo v. Lakeland Highlands Canning Co.*, 309 U. S. 521, 60 S. C. 521. (3), (4) and cases cited. See Reason "O." of present Petition. See also the Memoranda embodied in the Appendix to Brief in U. S. C. C. A., 3rd. C. of which copies are herewith filed in this Court as parts of the Record. The records of the court below alone present substantial competent evidence to sustain the findings of facts and conclusions of law of the said court per Thomas G. Walker, District Judge. The conspiracy is there aptly presented ever since the year 1926. See also the exhibits submitted herewith, as well as the remaining exhibits on file in the court below.

9. In the federal courts a decision of the circuit court of appeals is binding on the district courts in its circuit for the propositions which it decided (21. C. J. S. Sec. 198): 20 *Edelmann & Co. v. Triple A. Specialty Co.*, 88 F. 2d. 852, certiorari denied 57 S. Ct. 673, 300 U. S. 680, 81 L. Ed. 884; *The M. M. O'Brien*, 60 F. 2d. 976; *The Philip J. Kenny*, D. C. N. J. 57 F. 2d. 335; *Cleaves v. Peterboro Basket Co., J. A. Fischer Co.* 49 F. 2d. 920; *Palmer v. Bender*, 49 F. 2d. 1069; affirmed 60 F. 2d. 812, certiorari denied; *Doolittle v. Allen*, 53 S. Ct. 315, 287 U. S. 671, 77 L. Ed. 578; *Mobley v. J. A. Fischer Co.*, 49 F. 2d. 920; *Palmer v. Bender*, 49 F. 2d. 316; affirmed 57 F. 2d. 32 certiorari granted 53 S. Ct. 79, 287 U. S. 586, 77 L. Ed. 512; affirmed 53 S. Ct. 225, 287 U. S. 551, 77 L. Ed. 489; *Western Electric Co. v. Wallerstein*, 48 F. 2d. 268; *D. L. Flack & Son v. West Virginia Coal Co.*, 46 F. 2d. 177, affirmed 50 F. 2d. 1075; *In re King*, 46 F. 2d.

112; *Hartford & New York Transp. Co. v. Rogers & Hubbard Co.*, 40 F. 2d. 957, affirmed 47 F. 2d. 189, certiorari denied; *Rogers & Hubbard v. Hartford & New York Transp. Co.*, 51 S. Ct. 483, 283 U. S. 835, 75 L. Ed. 1446; *Lektophone Corp. v. Miller Bros. Co.*, 37 F. 2d. 580, reversed on other grounds 51 S. Ct. 93, 282 U. S. 168, 75 L. Ed. 274 amended 51 S. Ct. 178; *Sugarland Industries v. Bass*, 36 F. 2d. 375, reversed on other grounds; *Bass v. Sugarland Industries*, 50 F. 2d. 424; *In re United Realty & Homebuilders' Corp.*, 27 F. 2d. 138; *U. S. ex rel. Hughes v. Gault*, 13 F. 2d. 225; *In re Grossberg*, 11 F. 2d. 329; *McNeely v. Town of Vidalia*, 6 F. 2d 21, modifying and making injunction permanent, 6 F. 2d. 19, and affirmed; *Town of Vidalia v. McNelly*, 47 S. Ct. 758, 274 U. S. 676, 71 L. Ed. 1292; *Morgan v. Tennessee Valley Authority*, 28 F. Supp. 732; *U. S. v. La Vine*, 28 F. Supp. 113; *U. S. v. Aluminum Co. of America*, 26 F. Supp. 315; *Sheldon v. Metro-Goldwyn Pictures Corp.*, 26 F. Supp. 134; *Bank of New York & Trust Co. v. U. S.*, 25 F. Supp. 314; *Cookson v. Louis Marx & Co.*, 25 F. Supp. 615; *In re James Butler Grocery Co.*, 22 F. Supp. 995; *O. D. Jennings & Co. v. Maestri*, 22 F. Supp. 980, affirmed 97 F. 2d. 679; *Diatel v. Gleason*, 22 F. Supp. 355; *In re Davis*, 22 F. Supp. 2; *English v. Bitgood*, 21 F. Supp. 641; *Baker v. U. S.*, 21 F. Supp. 577; *Forrest v. Southern Ry. Co.*, 20 F. Supp. 851; *Helmbright v. John A. Gebelein, Inc.*, 19 F. Supp. 621; *Koppers Connecticut Coke Co. v. James McWilliams Blue Line*, 18 F. 2d. 865; certiorari denied; *James McWilliams Blue Line v. Koppers Coke Co.*, 58 S. Ct. 25, 302 U. S. 706, 82 L. Ed. 545; *U. S. ex rel Amato v. Commissioner of Immigration Ellis Island New York Harbor*, 18 F. Supp. 480; *Murphy v. Dunklin County*, 17 F. Supp. 128; *Campbell v. Lago Petroleum Corp.*, 16 F. Supp. 980; *Rem-*

ington Rand v. Lind, 16 F. Supp. 666; *U. S. v. Hartford Accident & Indemnity Co.,* 15 F. Supp. 791; *In re Lehrenkraus,* 14 F. Supp. 682; *In re Ruckman,* 13 F. Supp. 992; *In re Cheney Bros.,* 2 F. Supp. 605; *G. B. R. Millin Co. v. Thomas,* 11 F. Supp. 833; *Neild Mfg. Corp. v. Hassett,* 11 F. Supp. 642; *In re Consolidation Coal Co.,* 11 F. Supp. 594, appeal dismissed, *Daersam v. Consolidation Coal Co.,* 79 F. 2d. 989; *McNary v. Guaranty Trust Co. of New York,* 6 F. Supp. 616; *Lawrence v. Travelers Ins. Co.,* 6 F. Supp. 628; *Irving Trust Co. v. Manufacturers Trust Co.,* 6 F. Supp. 185; *Motor Improvements v. A. C. Spark Plug Co.,* 5 F. Supp. 712, reversed on other grounds, 80 F. 2d. 385, certiorari denied; *A. C. Spark Plug Co. v. Motor Improvements,* 56 S. Ct. 939, 298 U. S. 671, 80 L. Ed. 1194; *In re Sollars,* 5 F. Supp. 483; *Mills Novelty Co. v. Bolan,* 3 F. Supp. 968, affirmed; *Mills Novelty Co. v. O'Ryan,* 68 F. 2d. 1009, certiorari granted; *O'Ryan v. Mills Novelty Co.,* 54 S. Ct. 692, 292 U. S. 615, 78 L. Ed. 1474, reversed on other grounds, 54 S. Ct. 779, 292 U. S. 609, 78 L. Ed. 1469; *Bausch & Lomb Optical Co. v. Wahlegren,* 1 F. Supp. 799, affirmed; *Wahlegren v. Bausch & Lomb Optical Co.,* 68 F. 2d. 660, certiorari denied 54 S. Ct. 774, 292 U. S. 639, 78 L. Ed. 1491, rehearing denied 54 S. Ct. 862, 292 U. S. 615, 78 L. Ed. 1491; *U. S. v. McGovern,* 1 F. Supp. 568, affirmed 60 F. 2d. 880, certiorari denied; *McGovern v. U. S.,* 53 S. Ct. 96, 287 U. S. 650, 77 L. Ed. 561; *Radio Corporation of America v. Radio Engineering Laboratories,* 1 F. Supp. 65, reversed on other grounds 66 F. 2d. 768, certiorari granted 54 S. Ct. 373, 290 U. S. 624, 78 L. Ed. 544; *Prudential Ins. Co. of America v. Herold, D. C. N. J.* 247 F. 681; *Jellison v. Krell Piano Co.,* 246 F. 509; *U. S. v. River Spinning Co.,* 243 F. 759, affirmed 250 F. 586.

10. H. Collin Minton, Jr., counsel pro se, Utah Fuel

Company, et als., in obtaining rephotostation of the exhibits of this petitioner; and William H. Tallyn, Chief Deputy Clerk of said district court, in charge of said records and exhibits, in permitting said counsel to rephotostat the said exhibits of this petitioner and in undersigning the same have had committed an act in furtherance of the object of the conspiracy charged; which act or acts is or are declared by a law of the United States (Tit. 18 U. S. C. A. Sec. 233) to be a crime under the laws of the United States; punishable by fine and imprisonment, or by both. 18 U. S. C. A. Section 233 (Criminal Code, Section 127.) 1940 Edition. Providing: "Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; * * * shall be fined not more than $5,000, or imprisoned not more than seven years or both;" (Mar. 4, 1909, Ch. 321, Sec. 127, 35 Stat. 1111). The lists of said exhibits appear at pages 413 to 428 of Vol. III, Record; Clerk's Certificate at p. 421.

These said exhibits were duly submitted to the court by motion and copy and notice to the interested parties and were photostated for the use of the same to the Circuit Court of Appeals, Third Circuit, on Appeal No. 8027. The second cl. of Section 391 of Title 28, U. S. C. A. provides: "28 U. S. C. A. 391, 2d. cl. On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties". (Mar. 3, 1911, Ch. 231, Sec. 269, 36 Stat. 1163; Feb. 26, 1919, Ch. 48, 40

Stat. 1181; Jan. 28, 1928, Ch. 14, Sec. 1, 45 Stat. 54). The said exhibits so obtained from the exhibits of this petitioner were a part of the Record on Appeal No. 8027, U. S. C. C. A., 3rd C. (See Clerk's Certificate p. 421). The said Circuit Court affirmed the Memorandum Opinion (Findings of Fact and Conclusions of Law) of the court below per Walker, D. J. The Opinion and Mandate of said circuit court appear at pp. 303 to 306, Vol. II, Record.

Judicial Notice: 28 U. S. C. A. Sections 695, 687, 688.

11. The respondent Utah Fuel Company in its motion for injunction and restraining orders of October 22, 1943 (parts of at last part of page 319 to 323, Col. II, Rec.). (Complete copy of motion and exhibits is an exhibit and part of the record in this court) present nothing more than those facts which were before the Circuit Court on Appeal No. 8027.

See the counts of the Declaration, the petitioner's exhibits and the record of the case in general. Nothing new or additional which was not before the district and circuit courts therebefore; and the adjudication of the said circuit court on Appeal No. 8027, was and is the law of the case on all subsequent appeals in which the facts are substantially the same.

As a general rule, an adjudication on the first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.

It may be stated as a rule of general application that, where the evidence on a second or succeeding appeal is substantially the same as that on the first or preceding

appeal, all matters, questions, points, or issues adjudicated on the prior appeal are the law of the case on all subsequent appeals and will not be reconsidered or readjudicated therein (5 C. J. S. Sec. 1821).

51 *Messenger v. Anderson*, 32 S. Ct. 739, 225 U. S. 436, 56 L. Ed. 1152; *Claiborne-Reno Co. v. E. S. DuPont de Nemours & Co.*, 77 F. 2d. 565; *General Motors Acceptance Corp. v. Mid-West Chevrolet Co.*, 74 F. Ed. 386; *Chesapeake & O. Ry. Co. v. Mears*, 70 F. 2d. 490, certiorari denied 55 S. Ct. 69; *Jones v. Box Elder County, Utah*, 67 F. 2d. 900; *Keeler v. Fred T. Ley*, 7 Co., 65 F. 2d. 499; *Surick General Accident & Liability Ins. Co. v. O'Keefe*, 64 F. 2d. 768, certiorari denied 54 S. Ct. 49, 290 U. S. 630, 78 L. Ed. 548; *Armour Fertilizer Works v. Sanders*, 63 F. 2d. 902, certiorari denied; *Sanders v. Fertilizer Works*, 54 S. Ct. 345, 290 U. S. 623, 78 L. Ed. 543, affirmed 54 S. Ct. 677, 292 U. S. 190, 70 L. Ed. 1206, 91 A. L. R. 950, rehearing denied 54 S. Ct. 855, 292 U. S. 612, 78 L. Ed. 1472; *Aetna Life Ins. Co. v. Wharton*, 63 F. 2d. 378, certiorari denied 53 S. Ct. 786, 289 U. S. 755, 77 L. Ed. 1500; *Utah Power & Light Co. v. Woody*, 62 F. 2d. 613; *Freeman v. Smith*, 62 F. 2d. 291; *Northern Pac. Ry. Co. v. Van Dusen Harrington Co.*, 60 F. 2d. 394; *International Brotherhood of Electrical Workers Local No. 134 v. Western Union Telegraph Co.*, 46 F. 2d. 736, certiorari denied 52 S. Ct. 13, 284 U. S. 630, 76 L. Ed. 536; *National Brake & Electric Co. v. Christensen*, 38 F. 2d. 721, certiorari denied 51 S. Ct. 36, 282 U. S. 86, 75 L. Ed. 764; *Minneapolis Steel & Machinery Co. v. Federal Surety Co.*, 34 F. 2d. 270, affirmed, 22 F. 2d. 712; *Dodd v. Union Indemnity Co.*, 32 F. 2d. 512, certiorari denied 50 S. Ct. 33, 74 L. Ed. 631; *Illinois Cent. Ry. Co. v. Crail*, 31 F. 2d 111, affirmed; *Crail v. Illinois Cent. R. Co.*, 21 Fed. 836, certiorari granted; *Illinois Cent.*

R. Co. v. Crail, 49 S. Ct. 483, 279 U. S. 833, 73 L. Ed. 982, reversed on other grounds, 50 S. Ct. 180, 281 U. S. 57, 74 L. Ed. 699, 67 A. L. R. 1423; *Pennsylvania Mining Co. v. United Mine Workers of America,* 28 F. 2d. 851, certiorari denied 49 S. Ct. 263, 279 U. S. 841, 73 L. Ed. 987; *City and County of Denver v. Denver Tramway Corp.,* 23 F. 2d. 287, certiorari denied, 49 S. Ct. 20, 278 U. S. 616; 73 L. Ed. 539; *L. P. Larson, Jr., Co. v. William Wrigley, Jr., Co.,* 20 F. 2d. 830, modifying *William Wrigley, Jr., Co. v. L. P. Larson, Jr., Co.,* 5 F. 2d. 731, and certiorari denied 48 S. Ct. 207, 276 U. S. 616; 72 L. Ed. 733, certiorari granted; *L. P. Larson, Jr., Co. v. William Wrigley Jr., Co.,* 48 S. Ct. 157, 275 U. S. 521, 72 L. Ed. 404, motion denied 48 S. Ct. 435, 73 L. Ed. 1018, and reversed in part on other grounds 48 S. Ct. 449, 277 U. S. 97, 72 L. Ed. 800; *City of Seattle v. Puget Sound Power & Light Co.,* 15 F. 2d. 794, certiorari denied 47 S. Ct. 456, 273 U. S. 752, 71 L. Ed. 874, and *Puget Sound Power & Light Co. v. City of Seattle,* 47 S. Ct. 458, 273 U. S. 753, 71 L. Ed. 874; *Couteau Trust Co. v. Massachusetts Bonding & Insurance Co.,* 12 F. 2d. 136; *Dickinson v. O. & W. Thum Co.,* 8 F. 570; *In re Paramount Publix Corp.,* 10 F. Supp. 504; *Meyer & Chapman State Bank v. First Nat. Bank,* 291 F. 42; *First Nat. Bank v. Old Dominion Trust Co.,* 284 F. 128; *Canal-Commercial Trust & Savings Bank v. Bank of Plant City,* 278 F. 178; *Philadelphia Rubber Works Co. v. U. S. Rubber Reclaiming Works,* 277 F. 171, affirming 276 F. 600, 613, and certiorari denied; *U. S. Rubber Reclaiming Works v. Philadelphia Rubber Works Co.,* 42 S. Ct. 187, 257 U. S. 660, 66 L. Ed. 422; *Browne v. Thorn,* 272 F. 950, certiorari granted 41 S. Ct. 625, 256 U. S. 689, 65 L. Ed. 1172, and affirmed 43 S. Ct. 36, 260 U. S. 137, 67 L. Ed. 171; *Keith v. Kilmer,* 272 F. 643, certiorari denied; *Kilmer v. Keith,* 42

S. Ct. 51, 257 U. S. 639, 66 L. Ed. 410; *Cogswell v. Drennen,* 172 F. 289, Petition dismissed; *Tilton v. Drennen,* 42 S. Ct. 53, 257 U. S. 651, 66 L. Ed. 417, rehearing granted 42 S. Ct. 168, 257 U. S. 631, 66 L. Ed. 406, certiorari denied 42 S. Ct. 169, 259 U. S. 657, 66 L. Ed. 428, and appeal dismissed 43 S. Ct. 358, 261 U. S. 424, 67 L. Ed. 823 and reversed on other grounds, 43 S. Ct. 704, 262 U. S. 735, 67 L. Ed. 1206; *Rainier Brewing Co. v. Great Northern Pac. S. S. Co.,* 270 F. 94, affirmed 42 S. Ct. 436, 259 U. S. 150, 66 L. Ed. 868; *Chapin-Sacks Mfg. Co. v. Hendler Creamery Co.,* 267 F. 180, certiorari denied 41 S. Ct. 62, 254 U. S. 648, 65 L. Ed. 451; *Bodkin v. Edwards,* 265 F. 621, affirming *Edwards v. Bodkin,* 267 F. 1004.

12. The decision of said circuit court on Appeal No. 8027, is the law of the case in all further proceedings in the cause in the trial court.

a. In General. The decision of a reviewing court becomes the law of the cause as to all matters properly within the scope thereof and controls in all subsequent trials or proceedings.

It is a general rule that the decision of an appellate court is the law of the case in further proceedings in the cause in the trial court: (5 C. J. S. Sec. 1967) 61: *City of New York Ins. Co. v. American Co. of Arkansas,* 42 S. W. 2d. 757, 184 Ark. 426; *American Co. of Arkansas v. Wheeler,* 36 S. W. 2d. 965, 185 Ark. 550; *Arkansas Fuel Oil Co. v. State,* 22 S. W. 2d. 556, 180 Ark. 765, (several other cases follow here); *Shields v. Rancho Buena Ventura,* 203 P. 577, 187 Cal. 144; * * *; *Greely Loveland Irr. Co. v. Handy Ditch Co.,* 240 P. 270, 77 Colo. 487; *Gray v. Mossman,* 99 A. 1062, 91 Conn. 430; *Firemen's Ins. Co. v. Oliver,* 167 S. E. 99, 176

Ga. 80, reversing 162 S. E. 636; * * *; *Vinyard v. North Side Canal Co.*, 274 P. 109, 47 Idaho 272, appeal dismissed and certiorari denied 50 S. Ct. 67, 280 U. S. 520, 74 L. Ed. 589; * * *; Numerous other cases follow here too many to copy and enter them (See them under note 61.)

And in all subsequent stages of the action or proceeding, 62: *Morris & Co. v. Alexander & Co.*, 22 S. W. 2d. 552, 180 Ark. 725; *Deacon v. Bryans*, 298 P. 30, 212 Cal. 87; *Oglethorpe University v. City of Atlantic*, 178 S. E. 156, appeal dismissed 55 S. Ct. 642; *Trenton v. Johnson*, 240 P. 859, 41 Idaho 583; *Palazzolo v. Sackelt*, 236 N. W. 786, 254 Mich. 287; *Denny v. Guyton*, 57 S. W. 2d. 415, 321 Mo. 1115, certiorari denied; *Guyton v. Denny*, 53 S. Ct. 657, 289 U. S. 738; certiorari denied; *Guyton v. Denny*, 53 S. Ct. 657, 289 U. S. 738, 77 L. Ed. 1486; *McGraw v. Southern Ry. Co.*, 184 S. E. 31, 209 N. C. 432; *Amerada Petroleum Corp. v. Elliff*, 41 P. 2d. 85; *Rugenstein v. Ottenheemer*, 152 P. 215, 78 Or. 371, Ann Case 1917 E953; *Public Theatres Corp. v. Carpenter*, 56 S. W. 2d. 248; *Perkins v. Vermont Hydro Electric Corp.*, 177 A. 631; *Kaufman v. Catzen*, 130 S. E. 292, 100 W. Va. 79; (4 C. J. p. 1214 note 84).

As in a subsequent suit for the same cause of action, 63: *Tally v. Ganahl*, 90 P. 1049, 151 Cal. 418. Or on a subsequent appeal in accordance with the rule laid down supra in sections 1821-1834.

13. The determination of the said circuit court on Appeal No. 8027 as to all questions within the record which were or might have been raised and decided is the law of that case in all subsequent proceedings in the case (24 C. J. S. p. 690, Section 1840.); *Marron v. U. S.*, 182 F. 2d. 218, certiorari granted 47 S. Ct. 574, 274 U. S. 727, 71 L. Ed.

1313, affirmed 48 S. Ct. 206, 72 L. Ed. 1016. Numerous other cases are cited hereunder.

14. Hostility is a form of bias and the hostility shown by District Judge Guy L. Fake (at pages 379-380-381, Vol. III, Record) shows positive hostility and racial discrimination, and all orders and judgments made and entered by said respondent's district court judge in cases in which this petitioner was and is a plaintiff are null and void, and are required to be reversed. *Whitaker v. McLean,* 118 F. 2d. 996; Judges Key 49 (2); Judges Key 49 (1). (The policy underlying the statute providing for the disqualification of a judge for bias is that the Courts of the United States shall not only be *impartial in controversies submitted to them, but shall give assurance that they are impartial.* Jud. Code, Sec. 21, 28 U. S. C. A. Sec. 25 Judges Key 49 (1). A right to be tried by a judge who is reasonably free from bias is a part of the fundamental right to a "fair trial," and if before a case is over a judge's bias appears to have become overpowering, it disqualifies him (Jud. Code Sec. 21, 28 U. S. C. A. Sec. 25) and cases cited; *Victor L. Berger, et al. v. United States,* 255 U. S. 22, 41 S. Ct. 230, 65 L. Ed. 481, and cases cited; *Mitchell v. United States,* 126 F. 2d. 550 and cases cited; American Jurisprudence, Vol. 12. Constitutional Law, p. 257, G. Discriminatory Administration of Laws and cases cited; Encyclopedia of United States Supreme Court Reports, Vol. 4. Constitutional Law, p. 402, (2) "Hostile Discriminations" Forbidden, and cases cited; *Yick Wo v. Hopkins,* 118 U. S. at p. 369 (as being the essence of slavery itself); (See, read, and consider the parts of case authorities on the question quoted and set out at pages 485-489, Vol. III, Record).

15. The remedy by appeal is inadequate. *Berger et al. v. United States,* 255 U. S. 22 Id. and cases cited.

16. The respondent judge in open court counseled to the counsel of record for the defendants below and respondents before this court the institution, before him, of fraudulent, false and criminal proceedings so that he may avoid the judgment of the Circuit Court of Appeals, Third Circuit, on Appeal No. 8027, and the Findings of Fact and Conclusions of Law by District Judge Thomas G. Walker; and to deprive this petitioner of life, liberty and property; and therefore has been of counsel and served and acted as counsel for the defendants within the meaning of the law found in Sec. 24 of Tit. 28 U. S. C. A.

The best argument in support of the foregoing questions is to be found in the colloquy of said respondent judge and H. Collin Minton, Jr., counsel of record for the defendants below and respondents here. See it at pages 379-381. Also, the respondent's opinion on the proceedings of fraud, deception, and criminality which he had counseled (pp. 381, last part, to the first part of page 382, and on to the end of said page). Also the proceedings so counseled by said respondent judge (pp. 401 to the top of page 404, Vol. III, Record. See also the matters and things embodied in the Appendix of the Brief to the U. S. C. A., 3rd C. which are parts of cases previously destroyed by fraud and deception by said respondent judge).

17. The petitioner herein is entitled to the protection of the "Due Process of Law" Clause of the 5th Amdt. to U. S. Constitution. "Rights of Persons"—Amdt. 5. This Amendment is a limitation upon the Federal Government. *Barron use of Tierman v. Baltimore,* 7 Pet. 243. See also *Hallinger v. Davis,* 146 U. S. 314, 319; *Jack v. Kansas,* 199 U. S. 372. This petitioner may not be deprived of life, liberty and property without due process of law. *Wong Wing*

v. United States, 163 U. S. 228, 238. *See also Li Sing v. United States*, 180 U. S. 486, 495. This Article is a restraint on the legislative as well as on the executive and judicial powers of the Government. *Murray v. Hoboken Land and Improvement Co.*, 18 How. 272, 277.

The general scope of the prohibition of the Fifth Amendment as against the Federal Government is frequently measured by the settled scope of the Fourteenth Amendment as against the States. This Court has proceeded on the assumption that the legal import of the phrase "due process of law" is the same in both Amendments. *French v. Barber Asphalt Paving Co.*, 181 U. S. 324, 329.

Due process implies a tribunal both impartial and mentally competent to afford a hearing. *Jordan v. Massachusetts*, 225 U. S. 167, 176. Hence, it violates the (Fifth and) Fourteenth Amendment and deprives this petitioner of due process of law, to subject him, his life, his liberty and his property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching or framing conclusions against this petitioner similar to those which he has reached in the past against this petitioner. *Tuney v. Ohio*, 273 U. S. 510, 523, 531. See also *Frank v. Mangum*, 237 U. S. 309, 335; *Moore v. Dempsey*, 261 U. S. 86.

There is no impartiality on the respondent Judge Guy L. Fake. He has expressed himself in the most barbaric expressions ever expressed by a judge against this humble petitioner, knowing that he was proceeding against him in the most barbaric and racial hatred against an upright person whom he forced before him. (See pages 379-381, Vol. III, Record). Also the parts of the cases embodied in the Appendix to Brief in U. S. C. C. A., 3rd C.

Argument

The respondent judge is neither impartial nor mentally competent to afford a trial according to the established rules of procedure because of his past judgments, false in fact and substance, in cases in which this humble petitioner was and is plaintiff; and, to carry on the object of the conspiracy against this petitioner proceed according to the plans which he outlined and counseled to H. Collin Minton, J., counsel pro se, principal defendant, Utal Fuel Company, et als.; who, during the pendency of the appeal in the circuit court, made four (4) Motions, to-wit:

"*To: Nicholas J. Curtis:*

Notice is hereby given that on Monday, September 16, 1946, at ten o'clock (D. S. T.) in the forenoon, United States District Court, Post Office Building, City of Newark, New Jersey, or as soon thereafter as counsel may be heard, I will move pursuant to Rule 12-(c) of the Federal Rules on Civil Procedure for judgment for defendants on the pleadings, the basis of said motion being that the pleadings filed herein clearly show that relief cannot be granted, in that it appears from the face of the pleadings that the right of action did not accrue within four years next before the commencement of this action pursuant to Utah Code Annotated 1946, Vol. 6, Title 104-2-23.

Respectfully,
H. Collin Minton, Jr.,
H. Collin Minton, Jr.,
Attorney for Defendant,
Utah Fuel Company, et als."

Dated: September 5, 1946. The first one is dated September 5, 1946, and the fourth one is dated December 6, 1946. All four are the very same.

18. The exhibition of racial and partisan feelings and repeated and unnecessary expressions of opinions of said respondent Judge Guy L. Fake, showing bias or prejudice with a fixed pre-judgment to force upon this petitioner martyric death in poverty, disqualified him from proceeding any further. (33 C. J. Sec. 168) Annotating: Exhibition of partisan feeling or unnecessary expression of opinion showing bias or prejudice may disqualify the judge. Citing: *Stamp v. Com.*, 195 Ky. 404, 243 S. W. 37; *Chenault v. Spencer*, 68 S. W. 128, 24 Ky. L. 141; *Massie v. Com.*, 93 Ky. 588, 20 S. E. 704, 14 Ky. L. 56, 4; *Peo. v. Lennor*, 200 N. Y. S. 510; *State v. Fullerton*, 76 Okl. 35, 183 P. 979. And, see cases *infra*, Note 65: Where a judge has manifested a partisan feeling evidencing a pre-judgment of the matter in issue, he is disqualified. 65. *Peo. v. Third Judicial Dist. Ct.*, 60 Colo. 1, 152 P. 149; *Massie v. Com.*, 93 Ky. 588, 20 S. W. 704, 14 Ky. L. 564; *Peo. v. Elmendorf*, 51 App. Div. 173, 64 N. Y. S. 775; Cameron, re: 126 Tenn. 614, 151 S. W. 64; *State v. Board of Education*, 19 Wash. 8, 52 P. 317, 67 Am. S. R. 706, 40 L. R. A. 317; *Barnett v. Ashmore*, 5 Wash. 163, 31 P. 466.

The foregoing Rule applies to and governs the Opinion expressed by Mr. Justice Goodrich of the Circuit Court of Appeals, Third Circuit expressing the opinion that this matter is a national duty; and he was going to save Judge Fake. This opinion disqualified him and avoided the judgment of said circuit court on Appeal No. 8664, and Appeal No. 9178 from which this case is brought before this Court. To sacrifice the life, liberty and property of this

humble petitioner in order to cover the criminality of the respondent Judge Guy L. Fake, is not the scope for which the said circuit court has been established, and all judgments of said circuit court entered thereafter are null and void.

19. The Constitution of the United States and Acts of Congress founded in section 24, and section 25 of Title 28 U. S. C. creating the disqualification contain mandatory provisions prohibiting said respondent Judge Guy L. Fake, from acting any further in the case; therefore, his acts and judgments in violation of Constitutional and said statutory prohibitions are considered absolutely void. Act as void. (33 C. J. Sec. 201 b. at p. 1023).

If the constitution or statute, creating the disqualification, by mandatory provision prohibits him from acting, his act is considered absolutely void: 65 *Cox v. U. S.*, 100 Fed. 293, 40 C. C. A. 380; *Lincoln v. Territory*, 58 Pac. 730; *Heydenfeldt v. Towns*, 27 Ala. 423; *State v. Castleberry*, 23 Ala. 85; *United Real Est. etc. Co. v. Barnes*, 159 Cal. 242, 113 P. 167, 88 P. 985; *State v. Young*, 31 Fla. 594, 12 S. 673, 34 Am. S. R. 41, 19 L. R. A. 636; *Fechheimer v. Washington*, 77 Ind. 366; *Schwing v. Dunlap*, 123 La. 485, 49 S. 134; *Blasdell v. York*, 110 Me. 500, 87 A. 361; *Blackburn v. Craufurd*, 22 Md. 447; *Horton v. Howard*, 79 Mich. 642, and other cases from Mich.; *Bedard, ex parte*, 106 Mo. 616, 17 S. W. 692; *Harrington v. Hayes County*, 81 Nebr. 231, 115 N. W. 773; *Frevert v. Swift*, 19 Nev. 363, 11 P. 273; *Stearns v. Wright*, 51 N. W. 600; *Moses v. Julian*, 45 N. H. 52, 84 Am. D. 114; *Russell v. Perry*, 14 N. H. 152; *Peo. v. Connor*, 142 N. Y. 130, many other cases from N. Y. follow here; *Orcutt v. Conrad*, 10 N. D. 431, 87 N. W. 982; *Dodd v. State*, 50 Okl. Cr. 513, 115 P. 632; *Pierce v. Bowers*, 8 Baxt. 353; many

other cases from Tenn. follow here; *Tepbleton v. Giddings,* 12 S. W. 851; *Hill v. Wait,* 5 Vt. 124; *State v. Sacks,* 3 Wash. 691, 29 P. 446; *McIntosh v. Bowers,* 143 Wis. 74, 125 N. W. 548.

20. The judgments of said respondent, Guy L. Fake, D. J., made and entered in disregard of the prohibitions of the United States Constitution and three affidivits in succession under section 25 U. S. C. 28, and said U. S. Statutes are void. (33 C. J. Sec. 30) "Judgments. b. Disqualified Judge. * * * 8 Where a judge is forbidden to act in a case in which he is interested, as by relation to parties or otherwise, any judgment by him in disregard of the prohibition is void". Citing: *Heydenfeldt v. Towns,* 27 Ala. 423; *State v. Castleberg,* 23 Ala. 85; *United Real Est. etc. v. Barnes,* 159 Cal. 242, 113 P. 167; *In Re: White,* 37 Cal. 190; *Peo. v. De La Tuerra,* 24 Cal. 73; *Ochus v. Sheldon,* 12 Fla. 138; *Fechheimer v. Washington,* 77 Ind. 366; *Foreman v. Hunter,* 59 Iowa 550, 13 N. W. 659; *Blaisdell v. York,* 110 Me. 500, 87 A. 361; *Hall v. Thayer,* 105 Mass. 219, 7 Am. R. 513; *Gay v. Minot,* 3 Cush. 352; *Sigmorey v. Sibley,* 21 Pick. 101, 32 Am. D. 248; *Coffin v. Cottle,* 9 Pick. 287; *In Re Cottle,* 5 Pick. 485; *Sandusky Glain Co. v. Santlac Cir. Judge,* 184 Mich. 126, 150 N. W. 329; *Bliss v. Caille Bros. Co.,* 149 Mich. 601, 113 N. W. 317, 12 Ann. Cas. 513; *Horton v. Howard,* 79 Mich. 642, 44 N. W. 1112, 19 Am. S. R. 198; *West v. Wheeler,* 49 Mich. 505, 13 N. W. 836; *Stockwell v. White Lake,* 22 Mich. 341; *Peninsular R. Co. v. Howard,* 20 Mich. 18; *Stearn v. Wright,* 51 N. H. 600; *Moses v. Julian,* 45 N. H. 52, 84 Am. D. 114; *Russell v. Perry,* 14 N. H. 152; *Keefe v. Syracuse Third Nat. Bank,* 177 N. Y. 305, 69 N. E. 593; *Re Doges, etc. Mfg. Co.* 77 N. Y. 101, 33 Am. R. 579; *Oakley v. Aspinwall,* 3 N. Y. 547; *Chambers v. Clear Water,* 1 Abb. Dec.

341, 1 Keyes, 310; *Elmira Realty Co. v. Gibson,* 103 App. Div. 140, 92 N. Y. S. 913; *Schoonmaker v. Clearwater,* 41 Barb. 200, Aff. 1 Abb. Dec. 341, 1 Keyes 310; *Place v. Butternuts Woolen, etc. Mfg. Co.,* 28 Barb. 503; *Converse v. McArthur,* 17 Barb. 410; *Foot v. Morgan,* 1 Hill 654; Washington *Ins. Co. v. Price,* Hopk. 1; *Orcutt v. Conrad,* 10 N. D. 431, 87 N. W. 982; *Holloway v. Hall,* 79 Okl. 163, 192 P. 219; *Bolling v. Anderson,* 4 Baxt. 550; *Reams v. Kearns,* 5 Coldw. 217; *Newcome v. Light,* 58 Tex. 141, 44 Am. R. 604; *Chambers v. Hodges,* 23 Tex. 104; *Summerlin v. State,* 69 Tex. Cr. 275, 153 S. W. 890; *Woody v. State* (Cr.) 69 S. W. 155; *Graham v. State,* 43 Tex. Cr. 110, 63 S. W. 558; *Abrams v. State,* 31 Tex. Cr. 449, 20 S. W. 987; *Lee v. British American Mortg. Co.,* 51 Tex. Civ. A. 272, 115 S. W. 320; *Watson v. Payne,* 94 Vt. 299, 111 A. 462; *Case v. Hoffman,* 100 Wis. 314, 72 N. W. 390, 74 N. W. 220, 44 L. R. A. 728.

Consent of parties cannot confer jurisdiction in such cases. Note 10 and cases cited.

21. All the judgments of said respondent Judge Guy L. Fake, in cases in which this petitioner was and is the plaintiff are reciting false pretenses whereby the said judge and the parties defendants in the suit carry on the conspiracy which is set out in the Declarations in Civil Nos. 728 and 2800.

The best argument in support of this said point is to be found in the respondent's own declarations made in the course of his execution of the atrocity now before the court. (See pages 379-380-381, Vol. III, Record wherein he declares: "And here I hold him incompetent and dismiss his cases" at page 380, lines 15th-16th).

22. The said respondent judge in his Opinion (at par. 4th, p. 382, Vol. III, Record) points out to the defendants the Statute of Limitations to be by them pleaded in defense of the claims and damages for which this petitioner demands judgment; and the defendants plead and present the same to said respondent judge according to his plan. Id. Point 17.

(1) Argument and Statutes of the State of Utah: See pages beginning with par. 5, at page 456 and on to page 464 inclusive of Vol. III, Record.

(2) In the case of *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U. S. 522, 41 S. Ct. 517, 76 L. Ed. 1244. "United States Constitution. Art. IV." this Court held: After having been defeated upon full hearing in its contentions, it took no further steps. "The 'public policy' of the government is to be found in the Constitution and the laws, and the course of administration and decision." *St. Louis, Min. & Mill Co. v. Montana Min. Co.*, 19 S. Ct. 61, 63, 171 U. S. 650, 655, 43 L. Ed. 32, Citing License Tax Cases, 5 Wall. 462; *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 340.

Public policy dictates that there be an end of litigation; and those who have contested an issue shall be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties. There is no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his case.

(3) The petitioner herein in his Declaration has pleaded the time of executions of acts in furtherance of the ob-

ject of the conspiracy. See Declaration in Civil No. 728, in 1st part of Vol. I. The parties defendants therein and respondents herein have contested the issues (pp. 5 to top of page 8 of Pleadings, Vol. I, is the Motion of respondent Utah Fuel Company et als; See Table of Contents at the beginning of Vol. I.) Is there any reason why the said respondent, Utah Fuel Company, should not be bound by the result of the contest of the Courts, district and circuit, to which it submitted its defenses, voluntarily appeared, presented its case and were fully heard by counsels, including the Assistant Attorney General of the State of Utah? And is there any reason why it should not be concluded by the judgment of those tribunals to which it has submitted its defenses?

(4) It has been held that rulings on motion to dismiss that bill stated cause of action is "law of case" binding other judges of same court. *Pathe Exchange v. International (etc)* 3 F. Supp. 63. See also "Law of Case". Id. It follows that the said respondents are on their way to deprive this petitioner of life, liberty, and property.

(5) The respondents rely on the law found in 104-2-23 Utah Code Annotated 1943, Vol. 6, 104-2-23, within four years. *Within four years!* An action upon a contract, obligation, or liability not founded upon an instrument in writing; also an open account for goods, wares and merchandise, and for any article charged in a store account; also on an open account for work, labor or services rendered, or materials furnished; provided, that action in all the foregoing cases may be commenced at any time within four years or the last payment is received.

(6) Note 8 under the section. The word "liability" in

this section does not extend to a tort. *Thomas v. Union Pac. R. Co.*, 1 Ut. 235.

(7) Note 12 under the section. *Suspension of Running of Statute.*

The commencement of an action in Justice's Court saves the bar of the Statute: *Guthiel v. Gilmor*, 76 P. 628, 27 U. 426 (Note 3) and cases cited; *Queanly v. Sullivan*, 42 U. 563, 132 P. 4, Note 4.; *Jones v. Jenkins*, 22 Fed. 2d. 642; *Peterson v. Evans*, 55 U. 505, 188 P. 152 (Note 2) and cases cited.

(8) Note 13. Pleading and Proof. *Clawson v. Boston Acme Mines Development Co.*, 72 U. 137, 269 P. 147, 59 A. L. R. 1318. Sup. Ct. of Ut.

(9) The facts alleged in each one of the counts set forth in the two Declarations embodied in first part of Vol. I, Record, tolled the said Statute of Limitations and saved its bar. Also the filing of the motion for injunction and restraining orders by the respondents Utah Fuel Company of October 22, 1943, together with the exhibits attached thereto tolled the said statute of limitations, and by adoption and ratification of every other act in furtherance of the object of the conspiracy, saved the bar of the said statute of limitations. See also photostatic Exhibits of the Law of Conspiracy as annotated in Supplement to Supreme Court Encyclopedia Supreme Court Reports. It is part of the Record.

(10) The principal respondent, Utah Fuel Company, is responsible for the prolongation of the adjudication of this case, and the involvement of numerous other persons, corporations, and associations. As far back as the year 1907,

the said respondent company was a vast employer in the coal industry in the state of Utah, and had in compulsory force and effect the medical system which has been enacted into law as Section 50, Ch. 1, Tit. 42. 42-1-50. Ut. Code Ann. See it at pp. 47-48 App. to Declaration in Civil No. 728. By the use of the said medical system it collected thousands of dollars monthly from its employees. To further carry out its operations it summoned this petitioner to its local offices and ordered him to be and appear as its interpreter over its Greek employees at Clear Creek, Utah. This petitioner had to accept the appointment. In the course of serving in that capacity the officers and agents of said employer, especially Dr. E. R. Murphy, were treating good many good men employees in a manner in which an ordinary man will not treat a beast, in effect refused to treat injured employees. He finally refused the necessary and proper treatment to the brother of this petitioner and committed him to the care of this petitioner and in his home while said doctor would be over at the pool rooms-gambling house every day and good part of the night; and while its local hospital was located about three city blocks from the house of this petitioner, therein forcing its employee to die a martyric death. Forced by this petitioner to remove its patient to the general hospital, it received him and kept him in the basement 4-5 days then put him outside the hospital advising this petitioner to the effect that his brother was an incurable patient. This petitioner then changed hospital and doctors and patient's case was diagnosed as: Nothing wrong with the boy. Needs medical attention. Needs an operation at once. This petitioner stood good for all. See Doctors' Certificates, Exhibits D. and E. In order to cut the length of the brief please see the several counts of the declarations embodied in Civil Nos. 728 and 2800. Also the

Statement of the Case, *supra*. It makes it its business to die out claimants rather than make good their claims. See: "The two hundred sixty-seventh cases against it which are cited in the Reports of the *Industrial Commission of the State of Utah*, from which photostatic copies have been obtained from the Library of Congress, Washington, D. C." These said exhibits are on file and part of the Record here on this proceedings for writ of certiorari and are marked (8). This petitioner, in order to cut the costs of printing and make his brief more concise, left them out of this brief.

23. The offer made by H. Collin Minton, Jr., Counsel of Record for himself, Utal Fuel Company et als., respondents in this case, to the respondent Judge Guy L. Fake (at page 380, line 17th, and again at page 381, lines 12 to 23 Vol. III, Record) constitutes offers to bribe the respondent judge to destroy the petitioner herein and his cause; within the meaning of the law found in section 131 of the Criminal Code (18 U. S. C. A. Section 237); and the receipt of the same by said respondent judge within the meaning of the law found in section 132 of the same Code (18 U. S. C. A. Sec. 238.)

See *Slade v. United States*, 85 F. 2d. 786, and statutes quoted, and cases cited.

24. An offer to bribe a judge in a pending cause on a hearing before him is an endeavor to influence him.

Bribery is the offering, giving, receiving, or soliciting of anything of value with intent to influence the recipient's action as a public official, whether executive, legislative, or judicial. American Jurisprudence, Vol. 8, p. 886, Section 2. Citing: *Walsh v. People*, 65 Ill. 58, 16 Am. Rep. 169; *State v. Tummons*, 225 Mo. App. 492, 37 S. W. 2d. 499, citing R. C.

L.; *State v. Ellis,* 33 N. J. L. 102, 97 Am. Dec. 707; *State v. Harrah,* 101 W. Va. 300, 132 S. E. 654, citing R. C. L.; *Honaker v. Board of Education,* 42 W. Va. 170, 24 S. E. 544, 32 L. R. A. 413, 57 Am. St. Rep. 847; *Rudolph v. State,* 128 Wis. 222, 107 N. W. 467, 116 Am. St. Rep. 32.

25. The declarations and admissions of the respondents which are set forth at pages 379-380-381, Vol. III, are admissible against each one of them and against both of them, as well as against all those respondents on whose behalf they were made.

One class of admissions consists in statements made by parties in the course of judicial proceedings, generally termed judicial admissions. Such statements are evidence against a party (*Kansas etc. R. Co. v. Fitzhugh,* 61 Ark. 341, 33 S. W. 960, 54 A. S. R. 211, *Williams v. Jeysers,* 11 Fla. 234, 89 Am. Dec. 243; *Weighley v. Matson,* 125 Ill. 64, 16 N. E. 881, A. S. R. 335; *Central Branch Union Pacific R. Co. v. Shoup,* 28 Kan. 394, 42 Am. Rep. 165; *National L. Ins. Co. v. Butter,* 61 Neb. 449, 85 N. E. 437; 87 A. S. R. 462) and may constitute the basis of a verdict (*Com v. McMurray,* 198 Pa. St. 51, 47 Atl. 952, 82 A. S. R. 787) whether made in pleadings and other written assertions, (See *infra,* par. 34-40) or orally by counsel (*Pratt v. Conway,* 148 Mo. 291, 49 S. W. 1028, 71 A. S. R. 602), and they may be introduced at a subsequent trial of the same suit, (*Wilkins v. Stidger,* 22 Cal. 231, 83 Am. Dec. 64; *Moynahan v. Perkins,* 36 Colo. 481, 85 Pac. 1132, 10 Ann. Cas. 1061) and note; (*Lander v. Seavers,* 32 Vt. 114, 76 Am. Dec. 156) or in another proceeding involving the same issue, (*Peelen v. Chicago, etc. R. Co.,* 71 Ia. 131, 42 N. W. 626, 4 L. R. A. 401; *Lynde v. McGregor,* 13 Allen (Mass.) 182, 90 Am. Rep. 188; *Breitenback v. Trawbridge,* 64 M. & N. 395, 31 N. W.

402, 8 A. S. R. 829; *Wagner v. Gibbs,* 80 Miss. 53, 31 So. 434, 92 A. S. R. 598; *State v. Longstreth,* 19 N. D. 268, 121 N. W. 1114, Ann. Case 1912D., 1317. From 1 R. C. L. Sec. 4 on p. 369. Citing the authorities cited above.

The complete statement of the declarant, including that which is favorable as well as that which is unfavorable, is admissible (*Clark v. Smith,* 10 Conn. 1, 25, Am. Dec. 47; *Williams v. Keyser,* 11 Fla. 235, 89 Am. Dec. 244; *Wilson v. Woodruff,* 5 Mo. 40, 31 Am. Dec. 196; *Weeks v. McNulty,* 101 Tenn. 495, 48 S. W. 809, 70 A. S. R. 693, 45 L. R. A. 185; *Mattocks v. Lyman,* 18 Vt. 98, 46 Am. Dec. 140).

If the statement constitutes part of a conversation or correspondence the opponent is entitled to have it put in evidence all that was said or written by or to the declarant in the course of such conversation (*Comm. v. Trefethem,* 157 Mass. 180, 31 N. W. 961, 24 L. R. A. 243, 82 Am. Dec. 342. Note from 1 R. C. L. p. 481, Sec. 17, citing the authorities cited above.

Admissions and declarations may be introduced in evidence when they tend to prove the principal or ultimate facts in the case. (*Rudd v. Byrnes,* 156 Cal. 636, 105 Pac. 957, 26 L. R. A. (N. S.) 134; *General Hospital Soc. v. New Haven Rendering Co.,* 79 Conn. 581, 95 Atl. 1065, 118 A. S. R. 173, 9 Ann. Cas. 168. From 1 R. C. L. p. 488, Sec. 26; same authority in permanent supp. Sec. 26. Ultimate Fact Provable by Declarations—(Cited in *McCloskey v. Hood Hilling Co.,* 119 Miss. 92, 80 So. 492) as well as when they are directed to the establishment of evidentiary facts; (*Germany v. State,* 62 Tex. Crim. 267, 137 S. W. 130, Ann. Cas. 1913 C. 477).

26. The place for the trial of this case is the Division

of the Court below at the City of Trenton, Mercer County, New Jersey where:

(a) The plaintiff resides.

(b) Where Counsel of Record for the principal defendant, Utah Fuel Company, resides or has his law offices.

(c) Where an overt act or overt acts (Counts 23rd and 24th of Declaration, Civil No. 728) has been or have been committed in furtherance of the object of the conspiracy. See said Counts (729, 103 of Tit. 28 U. S. C. A.)

(d) All who actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor. Cooley on Torts, 4th Edition. Section 85. Note 27 and cases cited thereunder. See also Sections 47, 75, 76, and 81 and cases cited therein.

(e) In re: *McKenna v. Fisk*, 42 S. Ct. at p. 248 this Court has held:

"But it is an established rule, that in transitory actions a venue is only necessary to be laid to give a place for trial. Such a venue is indispensable, for without it would not appear in what county the trial was to take place, nor could a jury be summoned to try the issue. Com. Dig. Pleader, C. 20; 1 Cowp. 176, 197; 5 Term Rep. 620; 2 Lev. 227; Bacon's Ab. Venue, C. 3 Term. Rep. 387. The venue for trial is a legal fiction, devised for the furtherance of justice, and cannot be traversed."

(f) In determining the place of trial there is no oppression in taking the conspirators to the place where the overt act was performed rather than compelling the victims and witnesses to go to the place where the conspiracy was formed. *Hyde and Schneider v. U. S.*, 225 U. S. 347.

(g) Where, as in this case, a continuing offense is committed in more than one district, the Sixth Amendment does not preclude a trial in any of those districts. *Hyde case. Id; Armour Packing Co. v. U. S.* 209 U. S. 56.

(h) Overt acts performed in one district by one of the parties who had conspired in another district give jurisdiction to the court in the district where the overt acts are performed as to all the conspirators. *Hyde Case. Id. Brown v. Elliot; U. S. v. Kissel,* 218 U. S. 601, followed to the effect that a conspiracy may be continuing one, and that the offense is not barred on the expiration of the period from the date of the conspiracy itself.

(i) See Affidavit set out on pp. 467-468-469 of Vol. III, Record. Also Memo. 515-520 Supp. to Vol. III, Record; Counts 23rd and 24th of Declaration in Civil No. 728, pp. 33-34.

27. The respondent Judge Guy L. Fake, uses the office and judgeship of the United States District Court, District of New Jersey, Division at Newark, N. J., for his personal gain and ambitions, thereby involved and involving every other judge of the same Court, as well as the judges of the Circuit Court of Appeals, Third Circuit,

who were endeavoring to "save him". See, read and consider:

(a) The parts of the three cases embodied in the Appendix to the Brief filed in the Circuit Court of Appeals, Third Circuit.

(b) The matters and things, Opinions, and/or statements of said respondent judge at pages 379-380-381.

(c) His Opinion dismissing Civil No. 2800 and paving the way for the respondents to aid him to dismiss Civil No. 728.

(d) The pleading of the statute of limitations while he himself (Fake, D. J., respondent here) falsely prolongs the adjudication of the conspiracy since the year 1929. See the several cases cited under Reasons D. and E. of Petition to which this brief is in support thereof.

SUMMATION

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1. The salary ($15.00) paid to the petitioner herein by the respondent Utah Fuel Company for his services as interpreter and the protection afforded to him was very, very absurd.

2. The respondent Utah Fuel Company was under general contractual obligation to furnish the needed medical treatment, operation, hospitalization, to the brother of this petitioner.

3. The employment of this petitioner as nurse for his

brother and the use of petitioner's home and use as hospital was unreasonable, unjust and a breach of its contractual obligations for which it collected pay for the same for years therebefore and thereafter.

4. The duty to transport its patient to Salt Lake City to its general hospital was the duty of the respondent company.

5. The reception by the chief medical staff of the respondent, Utah Fuel Company, of the brother of the petitioner and his entry into its general hospital was in conformity with the usages of said company.

6. The failure to give the needed medical treatment and operation during the first ten days in the hospital and the placing said patient in the basement without any medical attention was a breach of its contractual obligation.

7. The removal of said patient out of said general hospital of the said respondent by its medical staff and placing him outside as a tubercular to be and remain there to the end of his life was a breach of its contractual obligation as well as an indication to commit a criminal act.

8. The said respondent's failure to use the hospital's X-ray apparatus to diagnose the cause of the case of its patient was a breach of its contractual obligations.

9. The Notice, to-wit: "There is not a thing we can do for your brother." "All we can do is to give him plenty fresh air," given by the said respondent's Chief Medical Staff to this petitioner was a final notice to the effect that the said respondent-company refused to perform its contractual obligation and thus abandoned the brother of this petitioner to die a martyric death rather than give him the

medical treatment-operation for which it received pay for same.

10. The said notice as thus given to the petitioner by said Chief Medical Staff, and this petitioner being the sole and only custodian of his dying brother; dying for lack of medical treatment and operation, your petitioner herein became of duty, moral, Christian, and brotherly duty to remove him to a private hospital and to place him under the care of private doctors.

11. The recovery back to normal health of respondent's patient in private hospital and under private doctors constituted conclusive proof of the respondent's malpractice.

12. The private hospital received the respondent's patient on the conditions that if your petitioner MAKES GOOD THE PATIENT'S bills and pays the doctors. Thus your petitioner obligated himself to make good and promptly pay all bills if the private hospital would receive the dying brother of your petitioner and afford to him human hospitalization, care and treatment. And thus and only thus your petitioner paid up all hospital and doctors' bills and reasonable-modest convalescent bills.

13. The right to sue and recover the sums expended in the course of discharging the duties of the said respondent Utah Fuel Company thus as aforesaid forced upon your petitioner by the said medical staff of said respondent is: a. Constitutional right (Constitution of the State of Utah, Art. 1, Sec. 11); b. It is a Statutory right (R. S. Ut. 42-1-57); c. A contractual right (R. S. Ut. 42-1-50); d. A common-law right; and e. A Federal Statutory right (U. S. C. A. Tit. 8, Sec. 41).

14. The suit as filed on the 25th day of April, 1919, in the U. S. Dist. Ct. D. of Utah satisfied the requirements of the State Statute of Limitations of the State of Utah.

15. The judgment of the said U. S. District Court is the law of the case in so far as it obliged your petitioner to sue the said respondent-company in the U. S. District Court for the District of New Jersey.

16. The said respondent's resorting to the institution of criminal proceedings against your petitioner was its only way out with which they covered their malpractices and infernal and criminal practices and operations.

17. The character of the said respondent-company is not and never has been free from lawsuit and other judicial or quasi judicial proceedings (The Reported Cases against it. See The Reports of the State of Utah and The Industrial Commission of same State) so as to make it an offense to sue the said respondent-company by your petitioner.

18. The acts constituting a criminal conspiracy are embraced within the law found in R. S. of Utah—103-11-1. The same definition is given by R. S. New Jersey—2:119-1.

19. The position taken and maintained by the Authorities of the State of Utah is unwarranted by the principles of law and usages of the Courts of that State. That state not only has not, or ever have had, a cause of action or right to institute any proceeding against your petitioner, but on the contrary it has deprived him of his property (farm at Corinne, Ut., farm-house, etc.) without due process of law and on perjured affidavits to the effect that your petitioner gave up his property and went to fight for King Ferdinand of Greece. The absurdity of these facts is clear.

20. The position taken and maintained by the authorities of the United States and particularly the Federal Courts for the Districts of Utah, New Jersey, Southern District of New York together with some State Courts, and more particularly District Judge Guy L. Fake of the District Court of the United States for the District of New Jersey is utterly unwarranted as being tainted with favoritism and are repugnant to the Constitution and Acts of Congress of the United States.

21. The conduct of counsel for respondent Utah Fuel Company et als. and Judge Guy L. Fake of the District Court of the United States within and for the District of New Jersey present a shocking revelation of the formation and operation of the conspiracy and there is no reason in law why said District Judge should be permitted to take any further part in the case.

Accordingly, I urge that the Petition for Writ of Certiorari be granted as warranted by the principles of law and usages of this Court. I further urge that the Decree of the Circuit Court of Appeals Third Circuit on Appeal No. 8664 be nullified and made null and void with appropriate directions to make null and void the Orders of the District Court on Motions numbered 1, 2, and 3 by Hon. Thomas Glynn Walker, D. J.; and to the same effect and likewise to make null and void the Opinion of Fake, D. J. and the Orders made and entered thereon dismissing Civil No. 2800 and destroying Civil No. 728 U. S. District Court, District of New Jersey.

I further urge that the judgment of the Circuit Court of Appeals, Third Circuit, on appeal No. 9178, for which the present proceedings for writ of certiorari are herewith

presented, be nullified and made null and void with appropriate directions directing the District Court to make null and void the Opinion and Order of the respondent Judge Guy L. Fake, dismissing present proceedings under Section 25 of Tit. 28 U. S. C. A., and remit this case to the Division of the Court at Trenton, N. J., for further proceedings to be thereat had according to law.

Respectfully submitted,
NICHOLAS J. CURTIS, LL. B.,
Petitioner Appearing Pro Se,
No. 145 North Broad Street,
Trenton 8, New Jersey.

To Guy L. Fake, District Judge of the United States District Court, District of New Jersey, Trenton, N. J.;

H. Collin Minton, Jr., Counsel pro se, Utah Fuel Company, et als., Trenton Trust Bldg, Trenton, New Jersey;

George A. Cella, Attorney for George Lavdas and Louis Antonopoulos, No. 143 East State Street, Trenton, New Jersey;

William V. Rosenkrans, Counsel Pro Se, No. 5 Colt Street, Paterson, New Jersey;

Carol C. Johnson, Counsel Pro Se, No. 68 Williams Street, Borough of Manhattan, New York City, N. Y.

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IN THE

Supreme Court of the United States

October Term, 1947

No. 1049

NICHOLAS J. CURTIS,
Petitioner,

vs.

UTAH FUEL COMPANY, GUY L. FAKE, U. S. DISTRICT JUDGE, ET ALS.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

ADDITIONAL AFFIDAVIT SETTING FORTH INJURIES INFLICTED WHILE PETITION AND BRIEF WERE BEING PRINTED; ALSO ADDITIONAL PRECEDENCIES UNDER SECTION 216 OF TITLE 28, U. S. C. A.

NICHOLAS J. CURTIS,
Petitioner and Affiant.
145 North Broad Street,
Trenton 8, New Jersey.

Murrelle Printing Company, Law Printers, 201-203 Lockhart St., Sayre, Pa.

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Additional Affidavit

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1947

No.

Nicholas J. Curtis, Petitioner

vs.

Utah Fuel Company, Guy L. Fake, U. S. District Judge, et als., Respondents

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ADDITIONAL AFFIDAVIT SETTING FORTH INJURIES INFLICTED WHILE PETITION AND BRIEF WERE BEING PRINTED

United States of America,
District of New Jersey,
County of Mercer, ss:

Nicholas J. Curtis, for himself, upon oath, says:

1. I make this additional affidavit in support of my Petition for Writ of Certiorari at this time for the reason that the conspiracy set forth in my record, as it now is before this Court, has forced me down to my knees and continues to hold me so, forcing me to work in restaurants for my subsistence and moneys to keep up with its operations. Thus struggling twelve (12) hours, work hours, in the day,

I prepared my petition for writ of certiorari and supporting brief over and above the twelve hours of work in the restaurant.

2. On the night of January 17-18, while my said petition and brief were in the printers' hands, printing them for the use of this Court, and while at work peacefully at No. 7 W. Hanover Street, Trenton, N. J., I was rammed and struck on the head with the edge of a plate and cut just above the left ear. All this was staged by one James Niwore, Italian or Italian descent, and one waitress both lying in wait. See case in Police Court, City of Trenton, N. J. It all appeared that the management worked the scheme out in advance.

3. At 5 p. m. of the 18th day of January, 1947, I reported for work as usual and was turned back by George Stamoulis, the head of the owners in charge of the operations at that time, saying that if I go in all his other employees will stop working. Further on these, see pages 515-516, Supp. to Vol. III, Record. I was then told to return in a couple days to give them time to see what arrangements they could make.

4. On the 23rd day of January, 1947, I returned to my work and was turned back by the same person claiming the same pretenses. It all appeared that said employer personally directed the brutalities to be executed against myself. It is now the end of the month of January, 1947, and I am out of employment. Thus I have had time to further work out the authorities on the question of the violation of the law found in Section 216 of Title 28 U. S. C. A. by Judge Goodrich. I admit that this was a surprise to me. Thus, having recovered from the blow, I have had

time to further work the authorities out on the question of the violation of the law by Judge Goodrich, and I have found and present as follows:

In Re: Moran v. Dillingham, 19 S. Ct. 620, 622, 174 U. S. 153, 43 L. Ed. 93 (See page 10 of Petition) there is cited the case of *American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, 387, and at page 387 this Court says:

> "3rd. The more important suggestion is that the decree of the Circuit Court of Appeals is void, because Judge Pardee took part in the hearing and decision in that court, though disqualified from so doing by section 3 of the Judiciary Act of 1891, which provides that 'no justice or judge before whom a cause or question may have been tried or heard' in the Circuit Court 'shall sit on the trial or hearing of such cause or question in the Circuit Court of Appeals', 26 Stat. 827. The question whether this provision prohibited Judge Pardee (Judge Goodrich in the present case) from sitting in an appeal which was not from his own order, but from an order setting aside his order, is a novel and important one, deeply affecting the administration of justice in the Circuit Court of Appeals. If the statute made him incompetent to sit at the hearing, the decree in which he took part was unlawful, and perhaps absolutely void, and should certainly be set aside or quashed by any court having authority to review it by appeal, error or certiorari. United States v. Lancaster, 5 Wheat. 434; United States v. Embolt, 105 U. S. 414; The Queen v. Justices of Hertfordshire, 6. Q. B. 753; Oakley v. Aspinwall, 3 N. Y. 547; Tolland v. County Commissioners, 13 Gray 12. * * * But that,

if he was so disqualified, the writ should be granted, for the purpose of bringing up and quashing the decree of that court; that there should, therefore be a rule to show cause why a writ of certiorari should not issue on this ground and for this purpose only; and that the question whether the decree of the Circuit Court of Appeals was void, by reason of Judge Pardee's (Judge Goodrich's) having taken part in it, can more fitly be determined on further argument upon the return of that court to the rule to show cause. Ex Parte Dugan, 2 Wall 134.

If the decree of the Circuit Court of Appeals is void, because one of the judges who took part in the decision was forbidden by law to sit at the hearing, a writ of certiorari to that court to bring up and quash its decree is manifestly a more decorous, as well as a more appropriate, form of proceeding. * * *

And in the Matter of Rexford v. Brunswick Balke Collender Company, 228 U. S. 339, 57 L. Ed. 864, 33 S. Ct. 722, Mr. Justice Van Devander (at page 343, last cl.) says: 'The terms of the statute, before quoted (Act of March 3, 1891, 26 Stat. 628, c. 517, Sec. 3) are both direct and comprehensive. Its manifest purpose is to require that the Circuit Court of Appeals be composed in every hearing of judges none of whom will be in the attitude of passing upon the propriety, scope or effect of any ruling of his own made in the progress of the cause in the court of first instance, and to this end the disqualification is made to arise, not only when the judge has tried or heard the whole cause in the court below, but also when he has tried or heard any

question therein which it is the duty of the Circuit Court of Appeals to consider and pass upon.' Citing The American Const. Co. case and The Moran Cases.

And in the case of Wm. Cramp Sons v. Curtiss Turbine Co., 228 U. S. 645 (at page 652) this Court says: '* * * That the Circuit Court of Appeals which passed upon the case, was virtually no court at all, because not organized in conformity to law.

Our orders will therefore be:

Writ of Certiorari granted; the record of such writ to stand as a return. And,

The decree of the Circuit Court of Appeals will be reversed and the cause remanded with directions for further proceedings in conformity to this opinion.' "

5. It would seem manifest that the foregoing precedencies apply to and govern the petitioner's cause now before the Court. Judge Goodrich sat at the hearing or trial of appeal No. 8027, and concurred in the affirmance of the orders of the District Court from which the plaintiff appealed for the reasons sufficiently set forth in the Memorandum Opinion of Judge Thomas G. Walker, D. J. filed November 19, 1941 (See it at page 304, Vol. II, Record).

6. Judge Goodrich again sat on the hearing and trial of the petitioner's herein Petition for writs of mandamus and prohibition, No. 8540 October Term, 1943, and in a Per Curiam Opinion concurred in the decree of the Circuit Court, to wit:

The petition for writs of mandamus and prohibition is dismissed. (Filed March 20, 1944)

This was on the same Record; the same parties; and the same cause.

7. Judge Goodrich again sat at the hearing and trial of appeal No. 8664; on the same Record as that of appeal No. 8027, and Mandamus petition No. 8540; the same cause; and the same parties; and concurred in affirming the Opinion and Orders of the Court below per Fake, D. J., disregarding and destroying the Memorandum Opinion of Judge Walker and dismissing the companion suit No. 2800 notwithstanding the "Companion Case Rule" applicable to and governing such cases (21 C. J. S. Sec. 195, Note 81 and cases cited).

8. And again, Judge Goodrich sat at the hearing and trial of appeal No. 9178, on the same record; the same cause; the same parties; and the same facts, notwithstanding the prohibitory mandate of the said statute of the United States.

9. In going into the Courts for a just cause my scope is to obtain redress according to laws of the land. I never go into the Courts to battle the Judges therein in advance.

NICHOLAS J. CURTIS,
Petitioner and Affiant.

No. 145 North Broad Street,
Trenton 8, New Jersey.

Subscribed and sworn to before me this 1st day of February, 1947.

Isabelle Embley,
Notary Public of New Jersey.

My commission expires Jan. 17, 1952.